

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1392

Introduced by Assembly Member Tran

February 27, 2009

An act to ~~amend Section 290.004 of~~ *add Section 640.9 to the Penal Code, relating to sex offenders vandalism, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1392, as amended, Tran. ~~Sex offenders: mentally disordered offenders.~~ *Vandalism: Graffiti and Gang Technology Fund.*

Under existing law, a person is guilty of vandalism if he or she maliciously destroys, damages, or defaces with graffiti or other inscribed material any real or personal property that is not his or her own. The court is authorized to order a defendant who is convicted of vandalism to clean up, repair, or replace the damaged property, or to order the defendant, and his or her parents if the defendant is a minor, to keep the damaged property or another specified property in the community free of graffiti for up to one year.

Under existing law, any person who actively participates in any criminal street gang with knowledge that its members engage in a pattern of criminal gang activity and who promotes felonious criminal conduct by members of that gang is guilty of a felony and shall be punished, as specified.

Existing law establishes the Graffiti Removal and Damage Recovery Program by which a city, county, city and county, or other public agency may elect to have the probation officer of the county recoup for it, through juvenile court proceedings, the costs associated with the

defacement by minors of its property and the property of others, as specified. The program requires minors who are found to be within the jurisdiction of the juvenile court by reason of committing specified acts of vandalism, as a condition of probation, to wash, paint, repair, or replace the property defaced, damaged, or destroyed by the minor or otherwise pay restitution as well as the costs of identifying and apprehending the minor; as specified. The court is required to order the minor or the minor's estate to pay those costs to the probation officer to the extent the court determines that the minor or the minor's estate have the ability to do so, as specified.

This bill would provide that any person who commits specified acts of vandalism shall, in addition to any other punishment, pay a fine of \$150, or \$300 if the person is also determined to have committed a gang-related offense, as defined. By increasing the punishment for existing crimes, the bill would impose a state-mandated local program.

This bill would establish the Graffiti and Gang Technology Fund for deposit of the vandalism fines, to be continuously appropriated to the Department of Justice exclusively for the direct or indirect costs of technological advancements for law enforcement in the identification and apprehension of vandals and gang members, as specified. The bill would provide that the distribution of funds shall be made by the CalGang Executive Board based on the recommendations of the California Gang Node Advisory Committee and the California Graffiti Advisory Committee. The bill would require the department to maintain annual fiscal reports on the fund, and to prepare an annual report with specified information for submission to the CalGang Executive Board.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law requires specified persons who have been or are determined to be mentally disordered sex offenders, or persons who have been found guilty of a sex offense but found not guilty by reason of insanity at trial, to register in accordance with the Sex Offender Registration Act.~~

~~This bill would make nonsubstantive changes to those provisions.~~

Vote: ~~majority~~^{2/3}. Appropriation: ~~no~~-yes. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*

3 *(a) There is a present, vital, and growing need to develop*
4 *innovative strategies and technological services to effectively*
5 *reduce the trauma of graffiti and gang violence. A Graffiti and*
6 *Gang Technology Fund is needed to safeguard the fiscal integrity*
7 *of cities, counties, cities and counties, and the state.*

8 *(b) The Legislature declared criminal street gangs to be a clear*
9 *and present danger and menace to public order and safety in*
10 *enacting the Street Terrorism Enforcement and Prevention Act*
11 *(Chapter 11 (commencing with Section 186.20) of Title 7 of Part*
12 *1 of the Penal Code).*

13 *(c) There is a strong and growing trend of graffiti vandals*
14 *becoming more dangerous and developing into criminal street*
15 *gangs.*

16 *(d) Graffiti vandalism is a costly and pervasive problem*
17 *affecting all residents, property owners, businesses, and public*
18 *agencies across the state.*

19 *(e) The California Research Bureau estimates that the statewide*
20 *cost of graffiti abatement is potentially upwards of \$350 million*
21 *annually, the majority of which is borne by local governments.*
22 *The overwhelming amount of graffiti vandalism and gang-related*
23 *criminal activity far outweighs the resources available to law*
24 *enforcement for the identification and apprehension of these*
25 *offenders.*

26 *(f) Law enforcement resources are maximized through*
27 *technological advances and the use of shared databases. Cities*
28 *and counties that are utilizing graffiti databases, such as the Cities*
29 *of Pico Rivera and San Jose, and Orange County, are making*
30 *quantum leaps in the identification, apprehension, and intervention*
31 *of graffiti vandals. The use of the most advanced technology is*
32 *clearly the most cost-effective and responsible approach available.*
33 *New technologies make it possible to hold vandals accountable*
34 *for all the vandalism they have done by allowing for the retention*
35 *of information related to past vandalism.*

36 *(g) Graffiti vandalism appears to be a gateway crime for*
37 *truancy, trespass, and more dangerous crimes, including those*
38 *involving gang activity. Involvement in gangs can be deadly. It is*

1 *paramount to intervene with youth as soon as possible if they have*
2 *begun to be involved with this type of criminal activity. The use of*
3 *the most advanced technology will help law enforcement identify*
4 *youth involvement in criminal activity. Early intervention may*
5 *prevent further negative consequences for young vandals, their*
6 *families, and communities, as has been the case in the City of Pico*
7 *Rivera.*

8 *(h) It is the intent of the Legislature to maximize scarce law*
9 *enforcement resources with the utilization of graffiti databases,*
10 *shared intelligence databases, and new innovative technologies.*
11 *The Legislature finds that prudent stewardship and clear necessity*
12 *mandates the establishment of the Graffiti and Gang Technology*
13 *Fund for law enforcement.*

14 *(i) It is the intent of the Legislature to impose fines on offenders*
15 *for deposit into the Graffiti and Gang Technology Fund to support*
16 *the procurement of new technology to help eradicate the damage*
17 *committed by those offenders. Increased fines for gang-related*
18 *graffiti are warranted because of the huge intimidation factor*
19 *imposed on the community.*

20 *SEC. 2. Section 640.9 is added to the Penal Code, to read:*

21 *640.9. (a) It is the intent of the Legislature in enacting this*
22 *section to safeguard the fiscal integrity of cities, counties, cities*
23 *and counties, and the state by providing the technology needed to*
24 *maximize law enforcement resources through the establishment*
25 *of a Graffiti and Gang Technology Fund.*

26 *(b) For purposes of this section, “gang-related” means that the*
27 *person was an active participant in a criminal street gang, as*
28 *specified in subdivision (a) of Section 186.22, or committed an*
29 *offense for the benefit of, or at the direction of, a criminal street*
30 *gang, as specified in subdivision (b) or (d) of Section 186.22.*

31 *(c) Any person who violates Section 594, 594.2, 594.3, 594.4,*
32 *640.5, 640.6, or 640.7 shall, in addition to any other punishment,*
33 *pay a fine in either of the following amounts, to be deposited in*
34 *the Graffiti and Gang Technology Fund:*

35 *(1) One hundred fifty dollars (\$150).*

36 *(2) Three hundred dollars (\$300), if the person is also*
37 *determined to have committed a gang-related offense.*

38 *(d) The court shall order a minor or the minor’s estate to pay*
39 *a fine imposed pursuant to subdivision (c) to the extent the court*

1 *determines that the minor and the minor's estate have the ability*
2 *to do so.*

3 *(e) Notwithstanding Section 13340 of the Government Code,*
4 *there is hereby created in the State Treasury the Graffiti and Gang*
5 *Technology Fund, which is hereby appropriated to the Department*
6 *of Justice, without regard to fiscal years, exclusively for the direct*
7 *or indirect costs of technological advancements for law*
8 *enforcement in the identification and apprehension of vandals and*
9 *gang members.*

10 *(1) The fund shall consist of fines received pursuant to*
11 *subdivision (c), grants, gifts, and donations or bequests from*
12 *private sources. The CalGang Executive Board shall distribute*
13 *the funds based on the recommendations of the California Gang*
14 *Node Advisory Committee and the California Graffiti Advisory*
15 *Committee. At least 30 percent of the funds shall be distributed*
16 *for graffiti-related purposes, at least 30 percent of the funds for*
17 *gang-related purposes, any funds remaining shall be utilized for*
18 *law enforcement's greater need of technology as determined by*
19 *the CalGang Executive Board. The department may use up to 4*
20 *percent of those remaining funds for administrative costs, as*
21 *determined by the CalGang Executive Board.*

22 *(2) The department shall maintain annual fiscal reports on the*
23 *Graffiti and Gang Technology Fund in a form consistent with the*
24 *generally accepted accounting principles.*

25 *(3) The department shall prepare an annual report for*
26 *submission to the CalGang Executive Board. The report shall be*
27 *made available to the public upon request and shall include all of*
28 *the following:*

29 *(A) The total amount of money deposited into the fund.*

30 *(B) The amount of money expended from the fund.*

31 *(C) The amount of money remaining in the fund.*

32 *(4) Notwithstanding paragraph (1), the department may carry*
33 *over funds deposited in the Graffiti and Gang Technology Fund*
34 *until the time that funds are needed. The CalGang Executive Board*
35 *may request funds be saved for a specific need. Records of these*
36 *funds shall be available for public review upon request.*

37 *SEC. 3. No reimbursement is required by this act pursuant to*
38 *Section 6 of Article XIII B of the California Constitution because*
39 *the only costs that may be incurred by a local agency or school*
40 *district will be incurred because this act creates a new crime or*

1 *infraction, eliminates a crime or infraction, or changes the penalty*
2 *for a crime or infraction, within the meaning of Section 17556 of*
3 *the Government Code, or changes the definition of a crime within*
4 *the meaning of Section 6 of Article XIII B of the California*
5 *Constitution.*

6 ~~SECTION 1. Section 290.004 of the Penal Code is amended~~
7 ~~to read:~~

8 ~~290.004. Any person who, since July 1, 1944, has been or~~
9 ~~hereafter is determined to be a mentally disordered sex offender~~
10 ~~under Article 1 (commencing with Section 6300) of Chapter 2 of~~
11 ~~Part 2 of Division 6 of the Welfare and Institutions Code, or any~~
12 ~~person who has been found guilty in the guilt phase of a trial for~~
13 ~~an offense for which registration is required by this act, but who~~
14 ~~has been found not guilty by reason of insanity in the sanity phase~~
15 ~~of the trial, shall register in accordance with the Act.~~